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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,687	10/17/2003	Antonella Pesce	CM2525C	9352

27752 7590 12/07/2004

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CINCINNATI, OH 45224

EXAMINER

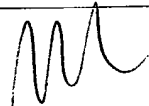
BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/687,687	Applicant(s) PESCE ET AL. 	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-21 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>22 March 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, 7, 9, 14 and 21 are rejected under 35 U.S.C. § 102(e) as being anticipated by Williams (US 6,506,958 B2).

Regarding claim 1, Williams teaches an absorbent article (5), preferably hygienic disposable absorbent article, comprising an agent (24)(methyl lactate) able to convey a perception to the wearer, without the need to create the external condition perceived by the wearer (col. 4, lines 1-9).

Regarding claim 2, Williams teaches that said article (5) is feminine hygienic disposable article, specifically, a tampon (Abstract).

Regarding claim 3, Williams teaches that the agent (24) is a cooling agent able to stimulate thermo-receptors of the skin and/or mucosal surface of the wearer of the article, to convey a freshness sensation to the wearer, without the need to change the temperature on the skin and/or mucosal surface (col. 4, lines 1-9).

Regarding claim 4, Williams teaches that the cooling agent (24) is selected from the group consisting of ketals, carboxamides, cyclohexyl derivatives (menthyl lactate), cyclohexanol

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derivatives, camphor, borneol, eucalyptol, methyl salicylate, tea tree oil, eucalyptus oil, peppermint oil and mixtures thereof (col. 4, lines 1-9).

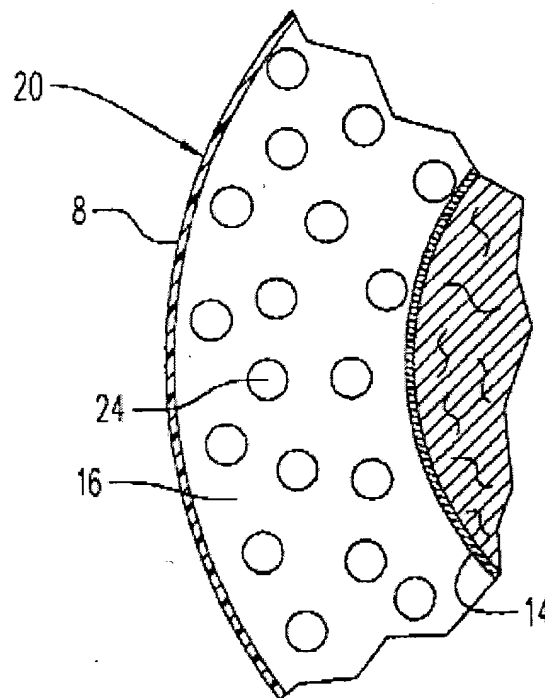
Regarding claim 6, Williams teaches that the cooling agent (24) is menthyl lactate (col. 4, lines 1-9).

Regarding claim 7, Williams discloses that combinations of different cooling agents (menthol, menthyl lactate, Frescolat ML, ethanol) are suitable for use as a cooling material (col. 4, lines 1-9).

Regarding claim 9, Williams teaches a delivery system for containing and delivering the agent (24) to at least a portion of the skin and/or mucosal surface of a wearer (col. 3, lines 38-58).

Regarding claim 14, Williams teaches that at least a portion of the wearer facing surface (16) comprises the agent (24)(fig. 3, below).

Regarding claim 21, Williams teaches a feminine hygienic absorbent article that changes color to signal a wearer of the article (col. 4, lines 23-27).

**FIG. 3**

Claims 1, 3 and 15 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lin (US 2003/0028163 A1).

Regarding claim 1, Lin teaches an absorbent article (20), preferably hygienic disposable absorbent article (sanitary napkin), comprising an agent (10) able to convey a perception to the wearer, without the need to create the external condition perceived by the wearer (§ 0012).

Regarding claim 3, Lin teaches that the agent (10) is a cooling agent (menthol) able to stimulate thermo-receptors of the skin and/or mucosal surface of the wearer of the article, to convey a freshness sensation to the wearer, without the need to change the temperature on the skin and/or mucosal surface (§ 0012, and table).

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Regarding claim 15, Lin teaches that said article (20) is a hygienic absorbent article comprising a topsheet (22) as a wearer facing surface, a backsheet (24) as a garment facing surface and an absorbent core (23) sandwiched between the topsheet and backsheet (24).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 16-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin as applied to claims 1, 3 and 15 above, and further in view of Carlucci *et al.* (EP 1 040 806 A1).

Lin fails to disclose a backsheet comprising an apertured film.

Carlucci *et al.* teach a backsheet in the form an apertured polymeric film (¶ 0049-0057).

Such a film construction renders the backsheet breathable and more comfortable to a wearer. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the

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breathable backsheet of Carlucci *et al.* in the sanitary napkin of Lin in order to make the napkin more comfortable to wear.

Regarding claims 17, and 18, Lin and Carlucci *et al.* do not teach the specific aperture sizes for the backsheet. Generally, mere changes in size or proportion will not patentably distinguish an invention from the prior art absent an unexpected result. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955); *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976); *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984). At the time of the invention, it would have been obvious for one of ordinary skill in the art to attempt to optimize the teachings of Lin and Carlucci *et al.* in order to obtain the ideal balance between breathability and liquid impermeability.

Regarding claim 19, Carlucci *et al.* teach a backsheet with a second, fibrous layer (§ 0070-0073).

Regarding claim 20, Carlucci *et al.* teach a backsheet having a first film web (50) having capillaries (54) disposed at an angle less than 90° from the surface of the film, and a second breathable nonwoven layer. (§ 0049-0073). The specifically claimed basis weight of the nonwoven does not patentably distinguish the invention over the references because there is no indication that the specific value produces an unexpected result (see above discussion of claims 17 and 18).

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams.

Williams does not teach the specific amount of cooling mixture which is applied to the tampon. The specifically claimed amount of mixture does not patentably distinguish the

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invention over the reference because there is no indication that the specific value is significant or produces an unexpected result (see above discussion of claims 17 and 18).

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams as applied to claims 1-4, 6, 7, 9 and 21 above, and further in view of Furman (US 5,451,404 A).

Williams teaches the claimed invention except for the specific type of cooling agent.

Furman teaches the cooling agent of claims 5 (col. 2, line 21-col. 6, line 13). The coolant is effective on mucous membranes and skin.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to select the coolant of Furman as the signal coating for the tampon of Williams in order to provide a safe cooling effect on mucous membranes as a signal while the device is in use.

Claims 10, 11 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams as applied to claims 1-4, 6, 7, 9 and 21 above, and further in view of Buchalter (US 3,896,807).

Williams does not expressly teach an emollient composition.

Buchalter teaches an absorbent article comprising an emollient composition, including spermaceti or polypropylene glycol (col. 5, lines 34-45). Such emollients are commonly used in the field of absorbent articles to hold treating agents in place and to allow for the gradual release of such agents to a wearer of the article.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add an emollient composition as taught by Buchalter to the tampon of Williams in order to provide for adhesion of the coolant material to the interior fibers of the tampon.



*Allowable Subject Matter*

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

No art of record teaches or suggests an absorbent article treatment agent delivery system comprising the specifically claimed alcohol or ester or acid derivatives.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the examiner's supervisor, Larry Schwartz may be reached at phone number (571) 272-4390. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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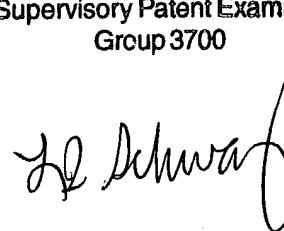
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A handwritten signature in cursive script, appearing to read "M. Bogart", with a long horizontal flourish extending to the right.

Michael Bogart  
1 December 2004

Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700

A handwritten signature in cursive script, appearing to read "L. Schwartz", with a long vertical flourish extending downwards.